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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,867	07/28/2003	Henri Hannula	0365-0568P	3629
2292 7590 06/27/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER				
DOWE, KATHERINE MARIE				
ART UNIT		PAPER NUMBER		
3734				
NOTIFICATION DATE		DELIVERY MODE		
06/27/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/627,867

Applicant(s)

HANNULA ET AL.

Examiner

KATHERINE M. DOWE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The following is a complete response to the amendment filed 3/6/2008.
2. Claims 26-47 are currently pending.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 26 recites the limitation "the patient" in line 9. There is insufficient antecedent basis for this limitation in the claim. For the purposes of examination, "the patient" in line 9 is interpreted as "the subject" referred to previously in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 26-29, 32-40, and 43-47 are rejected under 35 U.S.C. 102(a) as being anticipated by Oshio et al. (US 2001/0020127). Oshio et al. disclose a stereotactic device (Fig 1) comprising a stiff, wavy frame (10) configured to be mounted on the nasion of a subject outside the field of vision of the subject and at least three fiducial markers (16 A/B, 18 A/B, and 20 A/B) mounted on the frame at the front side of the nasion relator portion and at the end portions of the frame. The frame contacts the face of the subject only on a nose of the subject and is located only in

front of the face of the subject when the frame is mounted onto the subject such that a head of the subject is not immobilized (§0058). The frame includes at least one nasion relator portion (12) configured to support the nasion of the subject. The device provides space capable of accommodating the use of eyeglasses. A supporting element such as an adjustable band may be attached to the end positions of the frame to secure the stereotactic device to the subject (§0060). A diagnostic method comprises mounting the frame on a subject, defining a position of the stereotactic frame with respect to the subject via the fiducial markers, and performing a diagnosis of the subject (§0065-0069; abstract).

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 30, 31, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oshio et al. (US 2001/0020127), as applied to claims 28 and 39 above, in view of Conner (US 2003/0174277). Oshio et al. disclose the device substantially as claimed including a nasion relator portion (12). However, Oshio et al. do not disclose a nose piece compliant with a contour of the subject's nose configured to be fitted into the nasion relator portion of the frame. Connor discloses a lightweight eyeglass frame with a nasion relator portion (12) that rests on the nasion of a patient. Conner teaches the nasion relator portion should additionally include a replaceable nose piece (16), or pad, compliant with a contour of the subject's nose (§0011). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to modify the device of Oshio et al. to include a replaceable nose piece configured to be fitted into the nasion relator such that device may be easily adaptable to a variety of patients.

Response to Arguments

9. Applicant's arguments, see amendment, filed 3/6/2008, with respect to the rejection(s) of claim(s) 26-47 under Omurtag (US 6,132,437) have been fully considered and are persuasive. Applicant argues the prior art does not teach the frame contacts the subject *only* in front of the face such that a head of the subject is not immobilized. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Oshio et al. (US 2001/0020127).

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE M. DOWE whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Katherine Dowe
June 23, 2008

/K. M. D./
Examiner, Art Unit 3734